

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Roy Bernard Engebretson,

Petitioner,

v.

Attorney General of the State of Arizona, et
al.,

Respondents.

No. CV-11-00583-TUC-JGZ (JR)

ORDER

Pending before the Court is a Report and Recommendation issued by United States Magistrate Judge Jacqueline M. Rateau that recommends denying Petitioner's habeas petition filed pursuant to 28 U.S.C. §2254. (Doc. 24.) As thoroughly explained by Magistrate Judge Rateau, Petitioner is not entitled to relief as his petition is without merit. As Petitioner's objections do not undermine the analysis and proper conclusion reached by Magistrate Judge Rateau, Petitioner's objections are rejected and the Report and Recommendation is adopted.¹ Similarly, Petitioner's request for an evidentiary hearing fails to satisfy the requirements of 28 U.S.C. § 2254(e)(2), and will be denied.

Before Petitioner can appeal this Court's judgment, a certificate of appealability must issue. *See* 28 U.S.C. §2253(c) and Fed. R. App. P. 22(b)(1). Federal Rule of Appellate Procedure 22(b) requires the district court that rendered a judgment denying the petition

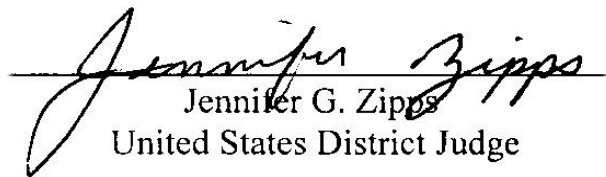
¹ The Court notes that the Report initially "disagreed" with the Arizona Court of Appeals as to whether Petitioner's Ground One and Ground Two claims were procedurally defaulted but then later found them to be defaulted. (Doc. 24, pp. 6, 11, 12.) This Court adopts the Magistrate Judge's final analysis that the claims are procedurally defaulted.

1 made pursuant to 28 U.S.C. §2254 to "either issue a certificate of appealability or state
2 why a certificate should not issue." Additionally, 28 U.S.C. §2253(c)(2) provides that a
3 certificate may issue "only if the applicant has made a substantial showing of the denial
4 of a constitutional right." In the certificate, the court must indicate which specific issues
5 satisfy this showing. *See* 28 U.S.C. §2253(c)(3). A substantial showing is made when
6 the resolution of an issue of appeal is debatable among reasonable jurists, if courts could
7 resolve the issues differently, or if the issue deserves further proceedings. *See Slack v.*
8 *McDaniel*, 529 U.S. 473, 484-85 (2000). Upon review of the record in light of the
9 standards for granting a certificate of appealability, the Court concludes that a certificate
10 shall not issue as the resolution of the petition is not debatable among reasonable jurists
11 and does not deserve further proceedings.

12 Accordingly, IT IS HEREBY ORDERED as follows:

- 13 (1) The Report and Recommendation (Doc. 24) is accepted and adopted;
14 (2) Petitioner's §2254 Amended Petition (Doc. 1) is denied and this case is dismissed
15 with prejudice;
16 (3) Petitioner's Request for an Evidentiary Hearing (Doc. 25) is denied;
17 (4) A Certificate of Appealability is denied and shall not issue; and
18 (5) The Clerk of the Court shall enter judgment accordingly and close the file in this
19 matter.

20 Dated this 25th day of June, 2014.

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24 Jennifer G. Zipp
25 United States District Judge
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